



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WILLIAM NEMETZ INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

As a preliminary matter, the tenant requested that the hearing be held in person as she stated there are several issues involved in this dispute and that she was of the belief the landlord had requested a teleconference call hearing. Upon explaining to the tenant that the Director decides the manner in which hearings are conducted and the only issue identified in the Application for Dispute Resolution pertains to a Notice to End Tenancy for Unpaid Rent the tenant indicated she was willing to proceed with the teleconference call.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

In addition to an Order of Possession, the landlord is seeking to recover unpaid rent of \$100.00 for January 2013, \$750.00 for February 2013 and \$750.00 for March 2013.

The tenancy commenced in June 1, 2005 and under the terms of the tenancy agreement the tenant is required to pay rent on the 1st day of every month. It was

undisputed that the tenant is currently required to pay rent of \$750.00 per month. It was also undisputed that the tenant failed to pay \$100.00 of the rent due January 1, 2013 and did not pay the rent of \$750.00 due on February 1, 2013. However, the tenant delivered a cheque for \$850.00 to the landlord's office on March 1, 2013 to pay the rental arrears. As of the date of this hearing the tenant has not paid any rent toward the month of March 2013.

The parties were in dispute as to whether the landlord served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). I noted that in the landlord's evidence package was page one of a 10 Day Notice dated February 6, 2013 but that a copy of page two was not provided. The landlord testified that the landlord posted the original version of the 10 Day Notice on the tenant's door and that the document served upon the tenant was double sided so that the second page was on the reserve side of the document. The landlord explained that prior to posting the document the landlord copied page one only.

The tenant acknowledged that she had what appeared to be the original version of the Notice, complete with the landlord's signature in blue ink, but submitted the document served upon her was not double sided. The landlord was of the position the tenant was being untruthful. The tenant also confirmed that a second page was not otherwise attached or accompany page one of the Notice.

During the hearing, I ordered the tenant to bring the 10 Day Notice that was served upon her to the Residential Tenancy Branch before the end of the day. The tenant complied with my order and I have had the opportunity to review the document supplied by the tenant. I note that the document appears to be the original version, complete with the landlord's signature in blue ink and tape on the top and bottom of the document from the posting on the door. I also note that the tenant's document is otherwise identical to the document supplied by the landlord. The reverse side of the document is blank.

Analysis

A tenant is required to pay rent when due under the terms of their tenancy agreement. Where a tenant does not pay all of the rent when due the landlord may serve the tenant with a 10 Day Notice on any day after rent was due. To be valid and enforceable, the Notice served upon the tenant must be in the approved form as required under section 52 of the Act. The 10 Day Notice in the approved form is a two page document.

The purpose of serving documents under the Act is to notify the person being served of their breach and the action being taken against them. When serving a 10 Day Notice the landlord must serve the tenant with both pages of the Notice as the second page contains important information with respect to the issuance of the Notice and the tenant's rights and obligations upon receiving such a Notice.

The party serving a document on another party has the burden to prove what it is they served.

Upon my review of the original version of the 10 Day Notice I do not accept the landlord's testimony that the document was double sided and both pages of the Notice were served upon the tenant. In failing to prove that both pages of the Notice were served upon the tenant I find the landlord has not satisfied me that a valid and enforceable Notice to End Tenancy was served upon the tenant. Therefore, I deny the landlord's request for an Order of Possession based upon the Notice that is the subject of this Application.

As the tenant has since satisfied the arrears for January and February 2013 and without evidence the landlord served a 10 Day Notice for the unpaid rent for March 2013 rent I deny the landlord's request for a Monetary Order. Accordingly, I also deny the request for authorization to retain the security deposit at this time and it remains in trust, to be administered in accordance with the Act.

The landlord remains at liberty to issue a 10 Day Notice for any rent that remains outstanding for March 2013 and the landlord's request for compensation for unpaid rent for March 2013 is dismissed with leave.

Conclusion

The landlord's request for an Order of Possession based upon a 10 Day Notice issued February 6, 2013 is dismissed as I was not satisfied both pages of the Notice were served upon the tenant, as required to be enforceable under the Act. The landlord's monetary claim for unpaid rent for January 2013 and February 2013 is dismissed as the arrears have been satisfied. The landlord's monetary claim for unpaid rent for March 2013 is dismissed with leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 14, 2013

Residential Tenancy Branch

